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IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1973

NO. 73-647

J. KENNETH JENSEN

Petitioner,

vs.

HERMAN O. GANT
Foreman of the Grand Jury,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

J. KENNETH JENSEN
Attorney at Law
7917 Ivanhoe Avenue
La Jolla, California 92037

Counsel for Petitioner

IN THE SUPREME COURT OF

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PETITIONER prays that a Writ of Certiorari issue to review the Judgment of the Court of Appeal of California denying Petitioner a Writ of Mandate, June 19, 1973.

OPINION BELOW

The Opinion of the California Court of Appeals, not reported, appears in the Appendix. Petitioner's request for a hearing in the California Supreme Court was denied July 18, 1973. A copy of the Denial is appended to this petition.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U. S. Code §1257(3).

QUESTION PRESENTED

Where a citizen, represented by an attorney, has evidence of crimes committed by government officials, do procedural rules of a grand jury which withhold from him the free access to the grand jury enjoyed by the district attorney deny equal protection of the law?

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provision invoked is Section 1 of the Fourteenth Amendment, which provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. On the afternoon of May 4, 1973, Larry Bonamo was riding a customized Harley-Davidson motorcycle, which belonged to petitioner. He was stopped by San Diego Police Officer P. A. Mueller who was on duty with two teen-age girls in his patrol car. In order to impress his teen-age companions, and to terrify a long-haired, bearded motorcycle rider, Mueller drew his gun and pointed it at Larry's head, then ordered him to lie on the ground. The officer told Larry he was a bank robbery suspect to justify this armed assault, even though he knew it was not true.

2. When Officer Mueller discovered that petitioner was the owner of the motorcycle, he told Larry he would give him ten minutes to get petitioner there with the registration papers, or he would seize the motorcycle as a stolen vehicle. This bank robbery suspect was then allowed to go unaccompanied to the nearest telephone booth, three or four blocks away, to call petitioner's law office and inform him of the officer's threat.

A short time later, petitioner arrived at the scene of the stop and produced documents of ownership and vehicle registration. The police officer immediately seized these, together with the motorcycle, and refused to return them to petitioner.

3. The police admitted they had nothing to indicate that the motorcycle was stolen, but they seized petitioner's vehicle and documents to provoke petitioner into resisting their conduct. A towing truck arrived and the police ordered the motorcycle fastened to the truck and towed away, even though petitioner warned them it was an expensive machine and fastening it to the back of the tow truck in that fashion would cause damage.

4. The next day petitioner phoned the San Diego Police Department and Officer Guisti told him he had seen the report and would check it out in a few days.

5. On Monday morning, May 7, 1973, petitioner went to the office of the City Attorney, where Deputy City Attorney George Wetzel called

Officer Guisti and requested release of petitioner's motorcycle. Officer Guisti asked to speak to petitioner and thereupon told him he did not intend to release the motorcycle. The deputy city attorney apologized and told petitioner he could not help him.

6. On Wednesday morning, May 11, 1973, petitioner moved the Superior Court of California in and for the County of San Diego for the return of the illegally seized property. He was denied the motion on the basis that no criminal charges were pending against him. The Court of Appeals of California upheld this ruling.

7. Petitioner proceeded to the office of the District Attorney to confer with Deputy Terry J. Scott, and, while in his office, he was joined by one of the chief deputies, Nicholas Kasimatis. Petitioner requested that proceedings be instituted against the officers for their conduct against Larry Bonamo and petitioner, but he was told by Chief Deputy Kasimatis that the District Attorney would not do anything because the police always have cause for what they do and particularly if the petitioner was

involved.

8. On the morning of May 16, 1973, petitioner went with Larry Bonamo to the Grand Jury Room in the San Diego County Courthouse. There petitioner asked the secretary-receptionist to speak to the grand jury foreman. At first she refused because she recognized petitioner as an attorney and told him he would not be permitted to either enter the grand jury room or speak to the foreman. Then, at petitioner's insistence, she did summon the grand jury foreman, Herman O. Gant, to the reception room, where petitioner and Larry requested a hearing to present evidence before the grand jury as victims of criminal conduct by the San Diego police officers. The grand jury foreman, Herman O. Gant, told petitioner that only members of the District Attorney's office were permitted to present evidence of crimes before the grand jury and victims were not permitted the same access to the grand jury enjoyed by the district attorney and under no cricumstances would petitioner be allowed to testify.

9. Petitioner applied to the California Court of Appeal for a Writ of Mandate to permit him to present evidence to the grand jury. The petition was denied on June 19, 1973. Thereafter, petitioner's request for a hearing in the California Supreme Court was denied on July 18, 1973.

REASONS FOR GRANTING THE WRIT

1. The grand jury must afford citizens the same access enjoyed by the district attorney and not subject the citizen to procedural barriers wherein his grievance may be denied consideration before reaching the grand jury itself. Creating a special class, the district attorney's office, exempt from the procedures is a violation of equal protection of the law.

2. The district attorney in his discretion can prevent the prosecution of crimes. For that reason, the grand jury was conceived to return indictments for the commission of public offenses if the prosecuting agency of the state in its own self interest refused to do so.

3. For this to be a republic in which no

men are above the law, the institution of the grand jury must be receptive to hear evidence of crimes wherever they occur.

Therefore, petitioner requests this Court to issue a Writ of Certiorari ordering the San Diego Grand Jury to allow petitioner to present evidence of criminal activity before it in the same manner afforded the District Attorney or, impose upon the District Attorney the same restrictions enjoining the petitioner.

Respectfully submitted,

J. KENNETH JENSEN
Counsel for Petitioner

APPENDIX

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1973

NO. _____

J. KENNETH JENSEN

Petitioner,

vs.

HERMAN O. GANT
Foreman of the Grand Jury

Respondent.

CERTIFICATE OF SERVICE

I, J. KENNETH JENSEN, being first duly sworn, depose and say:

I hereby certify that on October 11, 1973 a copy of this petition for a Writ of Certiorari was mailed, postage prepaid, to Respondents Lloyd M. Harmon Jr., County Counsel and the California Supreme Court. I further certify that all parties

required to be served have been served.

J. KENNETH JENSEN
Counsel for Petitioner

Duly witnessed and sworn before me this 11th day of October, 1973.

NOTARY PUBLIC

OFFICIAL SEAL
DONNA M. HANSON
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires May 18, 1976

COURT OF APPEAL — STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

Court of Appeal - Fourth Dist.
FILED
JUN 19 1973
JOHN R. McDOWELL, Clerk
Deputy Clerk

DIVISION ONE

J. KENNETH JENSEN,

vs.

HERMAN O. GANT, ETC.

4 Civil NO. 12706

SUPERIOR COURT NO. - - - -

BY THE COURT:

The petition for writ of mandate is denied on the ground Jensen has failed to follow the procedure outlined in the answer for presenting complaints to the grand jury.

P.J.

Copies to: J. Kenneth Jensen-La Jolla
County Counsel-SD

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUL 18 1973

I have this day filed Order

HEARING DENIED

In re: 4 Civ. *No.* 12706

Jensen

vs.

Gant

Respectfully,

G. E. BISHEL
Clerk

J. Kenneth Jensen, Esq.
7917 Ivanhoe Ave.
La Jolla, Ca. 92037

